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**United Nations Commission on International Trade Law**
**Forty-first session**

**Summary record of the 881st meeting**
Held at Headquarters, New York, on Thursday, 26 June 2008, at 3 p.m.

*Chairperson*: Mr. Illescas ..... (Spain)

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08-40087 (E)

*The meeting was called to order at 3.15 p.m.*

**Election of officers** (*continued*)

1. **Ms. Flores** (Bolivarian Republic of Venezuela), speaking on behalf of the Group of Latin American and Caribbean States, nominated Mr. Sandoval (Chile) for the office of Vice-Chairperson.

2. **Mr. Oyarzábal** (Observer for Argentina) and **Mr. Serrano Martínez** (Colombia) seconded the nomination.

3. *Mr. Sandoval (Chile) was elected Vice-Chairperson by acclamation.*

4. **Mr. Chong** (Singapore), speaking on behalf of the Group of Asian States, nominated Mr. Fujita (Japan) for the office of Vice-Chairperson.

5. **Mr. Sharma** (India), **Mr. Jung** Yongsoo (Republic of Korea), **Ms. Hu** Shengtao (China) and **Mr. Saripudin** (Observer for Indonesia) seconded the nomination.

6. *Mr. Fujita (Japan) was elected Vice-Chairperson by acclamation.*

**Adoption of the report of the Commission** (*continued*)

*Chapter III (Finalization and approval of a draft convention on contracts for the international carriage of goods wholly or partly by sea) (continued)* (A/CN.9/XLI/CRP.1/Add.1-16)

*Consideration of draft articles, chapter 5 (continued) and chapter 6 of the draft convention and related definitions* (A/CN.9/XLI/CRP.1/Add.5)

7. *The section of the draft report on consideration of draft articles, chapter 5 (continued) and chapter 6 of the draft convention and related definitions (A/CN.9/XLI/CRP.1/Add.5) was adopted.*

*Consideration of draft articles, chapter 6 (continued) and chapter 7 of the draft convention and related definitions* (A/CN.9/XLI/CRP.1/Add.6)

8. *The section of the draft report on consideration of draft articles, chapter 6 (continued) and chapter 7 of the draft convention and related definitions (A/CN.9/XLI/CRP.1/Add.6) was adopted.*

*Consideration of draft articles, chapter 8 of the draft convention* (A/CN.9/XLI/CRP.1/Add.7)

9. **Mr. Mollmann** (Observer for Denmark), referring to the fifth sentence of paragraph 4 of A/CN.9/XLI/CRP.1/Add.7 concerning draft article 38, said that in the interests of logic the word "necessarily" before the word "delayed" should be replaced by the word "unnecessarily".

10. *It was so decided.*

11. *The section of the draft report on consideration of draft articles, chapter 8 of the draft convention (A/CN.9/XLI/CRP.1/Add.7), as amended, was adopted.*

*Consideration of draft articles, chapter 8 (continued) and chapter 9 of the draft convention and related definitions* (A/CN.9/XLI/CRP.1/Add.8)

12. **Ms. Downing** (Australia), referring to paragraph 15 of A/CN.9/XLI/CRP.1/Add.8 concerning draft article 49, proposed the addition of a sentence at the end of the paragraph, reading: "It was stated that discussions with banks had indicated that article 49 would result in banks having additional risks to manage.".

13. **Mr. Miller** (United States of America) said that the wording should be modified so as not to imply that it represented the view of all banks everywhere.

14. **Ms. Downing** (Australia) explained that the intention was to balance the statement in paragraph 17 that discussions with banks and commodities traders had indicated that they considered the new regime to present less risk for them. To satisfy the United States delegation, she proposed to revise the words "It was stated" to "One State emphasized".

15. *It was so decided.*

16. *The section of the draft report on consideration of draft articles, chapter 8 (continued) and chapter 9 of the draft convention (A/CN.9/XLI/CRP.1/Add.8), as amended, was adopted.*

*Consideration of draft articles, chapter 9 (continued), chapter 10, chapter 4 (continued) and chapter 8 (continued) of the draft convention and related definitions* (A/CN.9/XLI/CRP.1/Add.9)

17. *The section of the draft report on consideration of draft articles, chapter 9 (continued), chapter 10, chapter 4 (continued) and chapter 8 (continued) of the draft convention and related definitions (A/CN.9/XLI/CRP.1/Add.9) was adopted.*

*Consideration of draft articles, chapters 11 and 12 of the draft convention* (A/CN.9/XLI/CRP.1/Add.10)

18. *The section of the draft report on consideration of draft articles, chapters 11 and 12 of the draft convention (A/CN.9/XLI/CRP.1/Add.10) was adopted.*

*Consideration of draft articles, chapter 12 (continued) and chapters 13 to 15 of the draft convention and related definitions* (A/CN.9/XLI/CRP.1/Add.11)

19. **Mr. Sato** (Japan), referring to paragraph 3 of A/CN.9/XLI/CRP.1/Add.11 concerning draft article 65, proposed inserting the words "or agreement" after "by declaration" in the last sentence, since under the Hague-Visby Rules, the time bar could be extended by agreement.

20. *It was so decided.*

21. **Ms. Downing** (Australia), referring to paragraph 13 concerning draft article 69, suggested inserting a sentence at the end of the paragraph to reflect a previous statement by her delegation about jurisdiction clauses in volume contracts. The sentence would read: "One example given was that such a State would be free to regulate jurisdiction issues arising out of a volume contract, including the circumstances in which a third party might be bound."

22. *It was so decided.*

23. **Mr. Sato** (Japan), referring to paragraph 25 concerning draft article 77, proposed inserting the words "or 'claimant'" after the phrase "the term 'plaintiff'" in the last sentence, so as to indicate clearly that neither "plaintiff" nor "claimant" were appropriate terms in that context.

24. *It was so decided.*

25. **Mr. van der Ziel** (Observer for the Netherlands), referring to paragraph 28 concerning draft article 78, said that the first sentence should be corrected to read: "By way of further explanation, it was observed that paragraph 1 of draft article 78 was intended to apply to charterparties and that paragraph 2 of the provision was intended to include bills of lading into which the terms of a charterparty had been incorporated by reference."

26. *It was so decided.*

27. **Mr. van der Ziel** (Observer for the Netherlands), turning to paragraph 29 also concerning draft article 78, said that, possibly because of the misunderstanding reflected in paragraph 28, there was now an error in the version of paragraph 2 of draft article 78 contained in paragraph 29 that needed to be corrected. He suggested replacing the words "such an arbitration agreement" with "such a transport document or electronic record". It was the document or record, rather than the agreement, that must comply with the requirements outlined in the subsequent subparagraphs. It was not a substantive change, but would clarify the revised document.

28. **Ms. Czerwenka** (Germany) said that it was her recollection that the chapeau was to stand as drafted. Only those subparagraphs requiring corrections had been amended.

29. **Mr. Miller** (United States of America) said that he was not against the proposal made by the representative of the Netherlands, but suggested using the term "electronic transport record" rather than "electronic record" for consistency with the language used throughout the draft convention.

30. **Mr. Sato** (Japan), supported by **Mr. Miller** (United States of America) and **Mr. Mollmann** (Observer for Denmark), said that, in his recollection, during the debate, the Secretary had read out subparagraphs (a), (b) and (c) of paragraph 2 of draft article 78, but had not read out the chapeau of paragraph 2. Since the Commission had approved the changes in subparagraphs (a) and (b), the chapeau should be changed accordingly; the proposed change to the chapeau was consistent with the Commission's debate on the draft article.

31. *It was so decided.*

32. *The section of the draft report on consideration of draft articles, chapter 12 (continued) and chapters 13 to 15 of the draft convention and related definitions (A/CN.9/XLI/CRP.1/Add.11), as amended, was adopted.*

*Consideration of draft articles, chapters 16 and 17 of the draft convention* (A/CN.9/XLI/CRP.1/Add.12)

33. **Ms. Czerwenka** (Germany), referring to paragraph 11 of A/CN.9/XLI/CRP.1/Add.12 concerning draft article 84, said that, in order to make the reference clear, the following sentence should be inserted at the beginning of the paragraph: "It was suggested to delete the words 'in force at the time this Convention enters into force'."

34. *It was so decided.*

35. **Ms. Lannan** (International Trade Law Division) said that a new paragraph should be inserted after paragraph 14 of document A/CN.9/XLI/CRP.1/Add.12, reading: "Following informal consultations, it was proposed that the following phrase be inserted into the chapeau of the draft provision, after the phrase 'enters into force': 'including any future amendment thereto'. Subject to the inclusion of a phrase along those lines, the Commission approved the draft article and referred it to the Drafting Group."

36. *It was so decided.*

37. *The section of the draft report on consideration of draft articles, chapters 16 and 17 of the draft convention (A/CN.9/XLI/CRP.1/Add.12), as amended, was adopted.*

*Consideration of draft articles, chapter 17 (continued) and chapter 18 of the draft convention* (A/CN.9/XLI/CRP.1/Add.13)

38. **Mr. van der Ziel** (Observer for the Netherlands), referring to paragraph 5 of A/CN.9/XLI/CRP.1/Add.13 concerning draft article 90, proposed replacing the first sentence by the following: "The proposal was accepted by acclamation by the Commission."

39. *It was so decided.*

40. **Ms. Czerwenka** (Germany), referring to paragraph 9 concerning draft article 92, said that, in order to reflect her delegation's comments more accurately, the last sentence should read: "Further, it was said that the definition of volume contract did not address the situation where the contract provided for a series of shipments by road but one single shipment by sea."

41. *It was so decided.*

42. *The section of the draft report on consideration of draft articles, chapter 17 (continued) and chapter 18 of the draft convention (A/CN.9/XLI/CRP.1/Add.13), as amended, was adopted.*

*Consideration of draft articles, chapter 18 (continued) of the draft* convention (A/CN.9/XLI/CRP.1/Add.14)

43. **Ms. Sabo** (Canada), referring to paragraph 3 of A/CN.9/XLI/CRP.1/Add.14 concerning draft article 94, proposed inserting the word "multi-unit" before "States" and deleting the words "between federal and provincial government", in line with the Commission's usual practice of not identifying individual States and so as to better reflect what was actually said.

44. *It was so decided.*

45. *The section of the draft report on consideration of draft articles, chapter 18 (continued) of the draft convention (A/CN.9/XLI/CRP.1/Add.14), as amended, was adopted.*

*Consideration of draft articles, chapter 9 (continued) of the draft convention* (A/CN.9/XLI/CRP.1/Add.15)

46. **Ms. Downing** (Australia), referring to paragraph 4 of A/CN.9/XLI/CRP.1/Add.15 concerning draft article 49, proposed inserting the following sentence at the end of the paragraph: "There was some support for the view that the new text of article 49 did not solve the problems previously identified."

47. *It was so decided.*

48. **Mr. Mollmann** (Observer for Denmark), referring to paragraph 7 concerning draft article 49, proposed inserting the following sentence after the second sentence in order to reflect the comments made by the Australian and Danish delegations: "Further, concern was expressed that in some jurisdictions a transport document containing a statement that the goods may be delivered without surrender of the transport document would not be considered a negotiable document at all."

49. *It was so decided.*

50. **Mr. Mollmann** (Observer for Denmark), referring to paragraph 9 concerning draft article 49, proposed inserting the phrase "into the transport document" after the word "incorporated" in the second sentence; otherwise it did not make sense.

51. *It was so decided.*

52. **Mr. van der Ziel** (Observer for the Netherlands), referring to paragraph 15 of A/CN.9/XLI/CRP.1/Add.15 concerning the debate on consequential changes to draft articles 47 and 48 to align them with the new text of draft article 49, said that there was another consequential change that should have been made to harmonize those three draft articles. In the new version of draft article 48, subparagraph (b) (iii) read: "the carrier refuses delivery because the person claiming to be the consignee does not properly identify itself as the consignee or does not surrender the

document". Draft articles 47 and 49 dealt with analogous although, of course, not identical situations and should probably contain a similar clause. He realized that the question did not, properly speaking, have to do with the adoption of the draft report; rather, it was a suggestion for the drafting group that perhaps it could consider the appropriateness of including such a change in the version the Commission would have before it when it considered the final adoption of the draft convention.

53. **Ms. Czerwenka** (Germany) said that the point had in fact been raised when the consequential changes were discussed but no decision had been taken.

54. **Mr. Sato** (Japan) apologized for missing that point when he had proposed the consequential changes required to draft articles 47 and 48 and said that he would be happy to see the correction made but was not sure of the proper procedure.

55. **Mr. Estrella Faria** (International Trade Law Division) said that the changes involved were too substantive for the drafting group to consider; the Secretariat did not feel that it had the mandate to amend the text to that extent on its own initiative. Perhaps after concluding its consideration of the draft report, the Commission could revert to the question of finalization and approval of the draft convention.

56. **Ms. Carlson** (United States of America) said that her delegation supported that suggestion.

57. **Ms. Sabo** (Canada) proposed that the debate that would follow should be reflected in the draft report.

58. **The Chairperson** said that, hearing no objection, he took it that the Commission, after completing the agenda item currently under discussion, wished to revert to consideration of draft articles 47 and 49 and to have the debate reflected in the draft report.

59. *It was so decided.*

60. *The section of the draft report on consideration of draft articles, chapter 9 (continued) of the draft convention (A/CN.9/XLI/CRP.1/Add.15), as amended, was adopted.*

**Finalization and approval of a draft convention on contracts for the international carriage of goods wholly or partly by sea** (A/CN.9/645 and A/CN.9/XLI/CRP.1/Add.15)

*Draft articles 47 and 49 (continued)*

61. **Mr. van der Ziel** (Observer for the Netherlands) said that his delegation's proposal was that subparagraph (b) (iii) in draft article 48, as it appeared in A/CN.9/XLI/CRP.1/Add.15, paragraph 15, namely, "(iii) the carrier refuses delivery because the person claiming to be the consignee does not properly identify itself as the consignee or does not surrender the document", should be inserted into draft article 47 following subparagraph (c) (ii), and into draft article 49, paragraph 2, following subparagraph (b) (ii), with any appropriate adjustments in wording.

62. **Mr. Miller** (United States of America) said that his delegation could support the substance of the proposal of the Netherlands, since it was essentially a technical correction.

63. **Ms. Czerwenka** (Germany) pointed out that draft articles 47 and 49 applied to different situations and would require different wording. Draft article 47 referred to situations in which no negotiable transport document was issued.

64. **Mr. Mollmann** (Observer for Denmark) pointed out that draft article 47, subparagraph (a), second sentence, stated: "The carrier may refuse delivery if the person claiming to be the consignee does not properly identify itself as the consignee on the request of the carrier." Therefore, only the first part of draft article 48, subparagraph (b) (iii), was pertinent in draft article 47. His specific proposal was that in draft article 47, subparagraph (c), first sentence, the word "or" should be deleted before "(ii)" and the words "or (iii) the carrier refuses delivery because the person claiming to be the consignee does not properly identify itself as the consignee," should be inserted before the words "the carrier may so advise the controlling party".

65. In draft article 49, on the other hand, paragraph 1 (a) (i) referred to the surrender of the negotiable transport document and stated that the holder would have to identify itself under certain circumstances, while paragraph 1 (a) (ii) talked about the holder demonstrating that it was the holder of the negotiable electronic transport record. Therefore, the whole text of draft article 48, subparagraph (b) (iii), could appropriately be inserted into draft article 49, paragraph 2 (a), provided the word "consignee" was replaced by the word "holder".

66. **Mr. Sato** (Japan) said he would like to offer a further refinement: the clause to be inserted in draft article 49, paragraph 2 (a), first sentence, before the words "the carrier may so advise the shipper", should read: "or (iii) the carrier refuses delivery because the person claiming to be a holder does not properly identify itself as one of the persons referred to in article 1, paragraph 10 (a) (i)".

67. **Mr. Mayer** (Switzerland) questioned whether it was correct not to mention surrender of the document in draft article 49.

68. **Mr. van der Ziel** (Observer for the Netherlands) said that Japan's proposal was correct, since paragraph 2 of draft article 49 applied to transport documents that stated that the goods could be delivered without the surrender of the document.

69. **Ms. Czerwenka** (Germany) said that her delegation could accept the proposal with respect to draft article 47. With respect to draft article 49, as she understood it, an attempt should first be made to deliver the goods in accordance with the provisions of paragraph 1; only if that were impossible could delivery be made without surrender of the document pursuant to paragraph 2.

70. **Mr. Sato** (Japan) said that in the situation covered by his proposal, it was possible that the holder might present a transport document but not surrender it.

71. **Mr. Schelin** (Observer for Sweden) asked if his understanding was correct that the phrase "the person claiming to be the consignee" would not be included, since paragraph 2 only came into play when the transport document did not need to be surrendered.

72. **The Chairperson** confirmed his interpretation.

73. **Mr. Sharma** (India) said that his delegation was fully in agreement with the composite proposals by the delegations of the Netherlands, Denmark and Japan and was satisfied that the inconsistency had been resolved.

74. *Draft articles 47 and 49, as amended, were approved in substance and referred to the drafting group.*

75. **Ms. Carlson** (United States of America) said that she spoke for all the delegations in expressing gratitude to the Chairperson for his outstanding leadership in bringing the agenda item to a successful conclusion and to the members of the Secretariat for their hard work and insightful suggestions. On returning to the capital her delegation would immediately set to work on the steps that would be required to prepare for implementation.

*The meeting rose at 5.55 p.m.*